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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,732	02/25/2004	James E. Haley	40030-10087	2743
21788	7590	09/03/2008	EXAMINER	
RYNDAK & SURI LLP 200 W. MADISON STREET SUITE 2100 CHICAGO, IL 60606			CARTAGENA, MELVIN A	
		ART UNIT	PAPER NUMBER	
		3754		
		MAIL DATE	DELIVERY MODE	
		09/03/2008	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/786,732	HALEY, JAMES E.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MELVIN A. CARTAGENA	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 14 May 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-24 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-24 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It appears the cap claimed in line 1 of claim 14 is a double inclusion of the cap claimed in line 23 of claim 1. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7, 14-16, 20, 21, 22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,762,612 to Miller.

Miller shows a bottle stopper as seen in Figs. 1-4, having a cylindrical body formed of a resilient material, a part to be inserted in the opening of a bottle, an upper substantially cylindrical part extending above an air passage 24, a pour opening 16 composed of a plurality of uniformly spaced apertures 29 that extend across substantially an entire cross section of the upper portion and encircles the air passage, a visual indicator 20 extending about 0.1 inches and having a slope of about 50 degrees that also forms an anti-drip spout, a sealing cap 30 with a

circumferential sealing ring 66 that seals the pouring and air passage from the atmosphere and is attached to the cylindrical body by threads 60. The device of Miller is used to pour product from a container.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,762,612 to Miller in view of US 4,128,189 to Baxter.

Miller shows all claimed features as discussed above except for the visual indicator being an indentation or color marking. Baxter shows a spout with protuberance 66 separated 180 degrees from the air passage 60, an indentation 78 and the use or covers of different colors, see column 3, lines 50-53. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use color to identify the pour spout in combination with an indentation and protuberance for and anti-drip spout feature indicating the proper pour orientation in the device of Miller as taught by Baxter in order to fit into a harmonious color style with the remainder of the container including the label on the container.

7. Claims 12, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,762,612 to Miller in view of US 5,228,603 to Pham et al.

Miller shows all claimed features as discussed above except for the filter material being of the same material as the spout and a flexible strand at about 120 degrees from the spout. Pham

show a spout with a filter material 76 made of the same material as the spout and a flexible strand 312 at about 120 degrees from the spout 305. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of the Miller to include a filter made of the same material as the spout and a stand as taught by Pham to facilitate manufacture of the spout by making the spout and the filter in one molding process and having a strand to prevent misplacing the cap.

8. Claims 18, 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,762,612 to Miller in view of US 2,812,113 to Beall.

Miller shows all claimed features as discussed above except for a visual indicator for verification of the relative position of the passage. Beal shows a visual indicator, seen in Fig. 9 as a level that reads “POUR” with an arrow indicating the pour direction at least 120 degrees from the air passage 106. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Miller to include a visual indicator to facilitate the smooth and even flow of liquid during pouring and sharply cut off the flow of liquid from the container after cessation of the pouring operation as taught by Beal.

#### ***Response to Arguments***

9. Applicant's arguments filed May 14, 2008 have been fully considered but they are not persuasive. In response to applicant's argument that the rejection under 35 U.S.C. 112, second paragraph, should be withdrawn because claim 1 does not positively recites a cap, claim 1 requires that the dispensing and pour opening be sealed by a cap; Therefore, the cap is positively recited in claim 1 and the cap claimed in line 1 of claim 14 is a double inclusion of the cap claimed in line 23 of claim 1.

In response to applicant's argument that the references fail to show a plurality of opening forming the pour opening and an air passage extending along the periphery of the cylindrical body, Miller shows a pour opening formed with a plurality of openings 29 and the air passage extends in an axial direction beyond the length of the lower portion.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the pouring device extending above the pour opening and air passage) are not recited in the rejected claim(s), the claim requires the upper portion to extend above the opening of the bottle. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the references fail to show a visual indicator of the relative locations of the pouring opening and the air passage, Baxter shows an element 66 indicating the relative locations of the pouring opening and the air passage 60.

In response to applicant's argument that the references of Pham and Beal provide no reason to be combined with the reference of Miller, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN A. CARTAGENA whose telephone number is (571)272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. C./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art Unit 3754